

In The United States Court of Federal Claims

Nos. 08-110C, 08-225C

(Filed: September 25, 2008)

SAMSON J. HYPOLITE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

OPINION and ORDER

On February 25, 2008, Samson J. Hypolite (plaintiff) filed a complaint challenging a decision rendered by the Postal Service Board of Contract Appeals on January 23, 2008. On March 28, 2008, he filed a similar complaint. The two complaints were consolidated by order dated June 18, 2008. On July 15, 2008, defendant filed a motion seeking to dismiss both complaints for lack of jurisdiction under RCFC 12(b)(1). Briefing on that motion is now completed.

This court is solemnly obliged to address questions concerning its subject matter jurisdiction. *See Mitchell v. Maurer*, 293 U.S. 237, 244 (1934); *LaMear v. United States*, 9 Cl. Ct. 562, 568 n.6, *aff'd*, 809 F.2d 789 (Fed. Cir. 1986). This court recognizes that plaintiff is acting *pro se* before this court, and thus the court will hold the form of plaintiff's submissions to a less stringent standard than those drafted by an attorney. *See Reed v. United States*, 23 Cl. Ct. 517, 521 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97 (1976)). Having reviewed plaintiff's complaint, this court agrees with defendant that it lacks jurisdiction over this lawsuit.

Exclusive jurisdiction over appeals from decisions of agency boards of contract appeals is vested in the United States Court of Appeals for the Federal Circuit.* *See* 41 U.S.C.

* It would appear that plaintiff is aware of this as shortly before he filed the first of his two complaints in this court, he filed an appeal with the Federal Circuit relating to the same board decision. That appeal was later dismissed by the Federal Circuit. *See Hypolite v. Potter*, 2008 WL 906151 (Fed. Cir. March 13, 2008).

§ 607(g)(1)(A) (2007); 28 U.S.C. § 1295(a)(10) (2007); *Brownlee v. DynCorp.*, 349 F.3d 1343, 1347 (Fed. Cir. 2003) (“This court has exclusive jurisdiction ‘of an appeal from a final decision of an agency board of contract appeals pursuant to section 8(g)(1) of the Contract Disputes Act of 1978.’ 28 U.S.C. §1295(a)(10) (2000).”). Reflecting this, the decisional law has made clear that this court lacks jurisdiction to review such decisions. *See Howard v. United States*, 21 Cl. Ct. 475, 478 (1990) (“this court has no jurisdiction to review the decisions of Boards of Contract Appeals”); *Beacon Oil Co. v. United States*, 8 Cl. Ct. 695, 700 (1985) (“Under 28 U.S.C. §1295(a)(10), an appeal from a final decision of an agency board of contract appeals lies with the United States Court of Appeals for the Federal Circuit. Accordingly this court is also without jurisdiction of plaintiff’s . . . contract claim appeal.”). Under the Contract Disputes Act, plaintiff had the option to pursue his contract claim either in this court or in the agency board of contract appeals. 41 U.S.C. §§ 606, 609(a)(1) (2007); *see Seaboard Lumber Co. v. United States*, 903 F.2d 1560, 1562 (Fed. Cir. 1990), *cert. denied*, 499 U.S. 919 (1991). Having made that choice in favor of the latter remedy, plaintiff cannot now obtain review in this court either directly or via a challenge to a board decision. *See Bonneville Assocs. v. United States*, 43 F.3d 649, 653 (Fed. Cir. 1994); *Nat’l Neighbors, Inc. v. United States*, 839 F.2d 1539, 1541-42 (Fed. Cir. 1988). It follows that this court plainly lacks jurisdiction over both his complaints.

Defendant’s motion to dismiss these cases under RCFC 12(b)(1) is hereby **GRANTED**. The Clerk, therefore, is hereby ordered to **DISMISS** both complaints.

IT IS SO ORDERED.

Francis M. Allegra
Judge